

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**MEGAN E. DAVIS**

Claimant

VS.

**SLATE CREEK GOOD SAMARITAN CTR.**

Respondent

AND

**SENTRY INSURANCE CO.**

Insurance Carrier

Docket No. 1,017,155

**ORDER**

Respondent and its insurance carrier request review of the June 23, 2004 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

**ISSUES**

The Administrative Law Judge (ALJ) found the claimant had sustained her burden of proof that she suffered accidental injury arising out of and in the course of employment. The ALJ ordered respondent to provide claimant temporary total disability compensation and also authorized Dr. Kenneth Jansson as claimant's treating physician.

The respondent requests review of whether the ALJ erred in finding the claimant's injury arose out of and in the course of employment. Respondent argues claimant told a co-worker that she suffered a non-occupational injury the day before she sought medical treatment.

The claimant denies she suffered a non-occupational injury nor that she told the co-worker that she was injured at the lake. Claimant notes the contemporaneous medical records support her assertion she injured herself at work while transferring a patient. Claimant further notes the co-worker's affidavit also indicates claimant said she re-injured herself at work helping transfer a patient. Consequently, claimant argues the ALJ's Order should be affirmed.

The sole issue for Board review is whether claimant suffered accidental injury arising out of and in the course of her employment with respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant testified she was employed as a trainee for the respondent.<sup>1</sup> Claimant's job duties included helping residents to transfer from beds to wheelchairs. On May 4, 2004, claimant was helping a resident to transfer from a wheelchair to bed when she turned and felt instant pain in her left knee which radiated to her ankle.

Claimant testified she thought she had just twisted her knee so she did not advise anyone of the incident. But she continued to have pain while she worked. Finally, she sought treatment on May 10, 2004, with her family physician's assistant, Melissa Simko. An MRI was performed which revealed a torn meniscus and a possible partial tear of the ACL. Upon being told the results of the MRI, the claimant, on May 13, 2004, notified the respondent of her injury.

The physician's assistant's medical note of the May 10, 2004, office visit indicate claimant suffered a work injury but that she could not recall a particular event and claimant just remembered she was at work when it happened.<sup>2</sup> At a subsequent visit to the physician's assistant on May 17, 2004, the medical note reflects claimant stated her knee injury occurred during a resident transfer. And claimant testified she had told the physician's assistant during her first office visit that she hurt her knee transferring a resident.

In an affidavit submitted at the preliminary hearing a co-worker, Lynne Rosedale, stated claimant had said she planned to go to the lake with her mother on May 9, 2004. When Ms. Rosedale next saw claimant at work she noticed claimant was limping and when she asked claimant what was wrong the claimant told her that she had hurt her leg at the lake. Later claimant told Ms. Rosedale that she re-injured her leg helping another co-worker transfer a resident. Claimant denied she went to the lake on May 9, 2004, and further denied she told Ms. Rosedale that she had hurt her leg at the lake.

A claimant in a workers compensation proceeding has the burden of proof to establish by a preponderance of the credible evidence the right to an award of compensation and to prove the various conditions on which her right depends.<sup>3</sup> A claimant must establish that her personal injury was caused by an "accident arising out of and in the

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<sup>1</sup> On May 12, 2004, claimant received her CNA certification.

<sup>2</sup> P.H. Trans., Resp. Ex. 1.

<sup>3</sup> K.S.A. 44-501(a) (Furse 2000); *Perez v. IBP, Inc.*, 16 Kan. App. 2d 277, 826 P.2d 520 (1991).

course of employment.”<sup>4</sup> The phrase “arising out of” employment requires some causal connection between the injury and the employment.<sup>5</sup>

The claimant described a compensable work-related accident to her left knee as she was performing her job helping transfer a resident. The respondent argues the failure to recall a specific incident at claimant’s first visit to the physician’s assistant coupled with the statements allegedly made to the co-worker render claimant’s testimony inconsistent and not credible.

The Board finds that where there is conflicting evidence, as in this case, credibility is important. Here, the ALJ had the opportunity to personally observe the claimant testify in person. In granting claimant’s request for medical treatment and temporary total disability benefits, the ALJ apparently believed claimant’s testimony over the co-worker’s affidavit. The Board concludes that some deference may be given to the ALJ’s findings and conclusions because she was able to judge the claimant’s credibility by personally observing the claimant.

Moreover, even assuming the co-worker’s affidavit was correct it indicates claimant re-injured her leg helping a specific co-worker transfer a resident. Again describing a work-related accidental injury to claimant’s leg. The Board finds claimant has met her burden of proof to establish that she suffered a work-related accidental injury arising out of and in the course of her employment. Accordingly, the Board affirms the ALJ’s Order.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.<sup>6</sup>

**WHEREFORE**, it is the finding of the Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated June 23, 2004, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of July 2004.

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BOARD MEMBER

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<sup>4</sup> Id.

<sup>5</sup> *Pinkston v. Rice Motor Co.*, 180 Kan. 295, 303 P.2d 197 (1956).

<sup>6</sup> K.S.A. 44-534a(a)(2) (Furse 2000).

c:     Stephen J. Jones, Attorney for Claimant  
       Brenden W. Webb, Attorney for Respondent and its Insurance Carrier  
       Nelsonna Potts Barnes, Administrative Law Judge  
       Paula S. Greathouse, Workers Compensation Director